

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

TRANSLATION

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

		Date of mailing (day/month/year)	See Form PCT/ISA/210 (sheet 2)
Applicant's or agent's file reference PAT01194 (A) P		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/EP2004/053031	International filing date (day/month/year) 11.11.2004	Priority date (day/month/year) 06.12.2003	
International Patent Classification (IPC) or both national classification and IPC C09D7/12, C09D5/82, C09C1/02			
Applicant BASF COATINGS AG			

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of this opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material
 in written format
 in computer readable form
 - c. time of filing/furnishing
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II Priority

1. The following document has not yet been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

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Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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1. Statement

Novelty (N)	Claims <u>4, 9, 15, 19-30, 32</u>	YES
	Claims <u>1-3, 5-8, 10-14, 16-18, 33, 34</u>	NO
Inventive step (IS)	Claims <u>9, 32</u>	YES
	Claims <u>1-8, 10-31, 33, 34</u>	NO
Industrial applicability (IA)	Claims <u>1-34</u>	YES
	Claims	NO

2. Citations and explanations:

1 Reference is made to the following documents:

D1: WO 01/92157 A (SOLVAY BARIUM STRONTIUM GMBH;
HARDINGHAUS, FERDINAND; KEINERT, TANJA;)
6 December 2001 (2001-12-06)

D2: EP 0 943 664 A (BAYER AG; BAYER
MATERIALSCIENCE AG) 22 September 1999
(1999-09-22)

D1 and D2 have been mentioned in the application.

2 Document D1 discloses (the references between parentheses refer to said document):

a process for preparation of BaSO₄ whose primary particle size is 30 nm, in which a dispersing agent, e.g. ethersulphonates, is added, the intended result being formation of small crystals. The particles are used in topcoats and cosmetics for UV absorption (page 1, paragraph 3-4; page 2, paragraph 3; page 3, paragraph 4 and 6; page 4, paragraph 2 - page 5, paragraph 1).

2.1 INDEPENDENT CLAIM 1

Document D1 therefore discloses, in conjunction with

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one another, all of the features mentioned in independent claim 1. The subject matter of said claim is therefore not novel (PCT Article 33(2)).

2.2 INDEPENDENT CLAIM 33

Document D1 therefore discloses, in conjunction with one another, all of the features mentioned in independent claim 33. The subject matter of said claim is therefore not novel (PCT Article 33(2)).

2.3 INDEPENDENT CLAIM 34

Document D1 therefore discloses, in conjunction with one another, all of the features mentioned in independent claim 34. The subject matter of said claim is therefore not novel (PCT Article 33(2)).

3 Document D2 discloses (the references between parentheses refer to said document) :
a scratch-resistant coating composition comprising i) deagglomerated nanoparticles, e.g. BaSO₄, and ii) dispersing agents, e.g. dibutyl phosphate (paragraph 1, 2, 14-16, 19, 22, 28, 40, 42 and 46).

3.1 INDEPENDENT CLAIM 1

Document D2 therefore discloses, in conjunction with one another, all of the features mentioned in independent claim 1. The subject matter of said claim is therefore not novel (PCT Article 33(2)).

3.2 INDEPENDENT CLAIM 12

Document D2 therefore discloses, in conjunction with one another, all of the features mentioned in

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independent claim 12. The subject matter of said
claim is therefore not novel (PCT Article 33(2)).

3.3 INDEPENDENT CLAIM 33

Document D2 therefore discloses, in conjunction with
one another, all of the features mentioned in
independent claim 33. The subject matter of said
claim is therefore not novel (PCT Article 33(2)).

4 DEPENDENT CLAIMS 2-8, 10, 11, 13-31

Claims 2-8, 10, 11, 13-31 do not contain any
features which, in combination with the features of
any claim to which they refer, meet the PCT
requirements for novelty and inventive step.

5 DEPENDENT CLAIMS 9, 32

The feature combination contained in the dependent
claims is neither known from the available prior art
nor rendered obvious thereby.

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Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

The application does not meet the requirements of PCT Article 6 because claims 1-5 and 16 are not clearly defined.

Claim 1 is not clear since it provides no clarity as to whether the dispersing agent and the crystallization inhibitor are the same, or two different, components (PCT Guidelines §5.31 and A5.20[2]).

Claims 1-5: the applicant is advised that the expression "preferably" and the phrases "in particular" and "if appropriate" and the expression "respectively" do not restrict the scope of protection of the claims (PCT Guidelines, §5.40).